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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 715

**THE ARKANSAS CORPORATION COMMISSION AND
FIFTY-ONE COUNTY TAX COLLECTORS OF AR-
KANSAS, PETITIONERS,**

vs.

**GUY A. THOMPSON, AS TRUSTEE OF MISSOURI
PACIFIC RAILROAD COMPANY, DEBTOR**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE EIGHTH CIRCUIT**

PETITION FOR CERTIORARI FILED JANUARY 22, 1941

CERTIORARI GRANTED MARCH 4, 1941

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[fol. a]

[Caption omitted]

[fol. 1]

**IN DISTRICT COURT OF THE UNITED STATES, EAST-
ERN DIVISION, EASTERN JUDICIAL DISTRICT OF
MISSOURI**

**In the Matter of MISSOURI PACIFIC RAILROAD COMPANY,
Debtor**

**In Proceedings for the Reorganization of a Railroad
No. 6935**

NOTICE OF APPEAL—Filed September 24, 1940

Notice is hereby given that Arkansas Corporation Commission, the members thereof and fifty-one (51) County Collectors of taxes to whom notice was sent of, this proceeding hereby appeal to the Circuit Court of Appeals of the Eighth Circuit from an Order entered in the above entitled action on the 24th day of September, 1940, overruling the Motion to Dissolve the Injunction entered April 11th, 1940, restraining the Trustee from paying taxes therein set out and described on the Trustee's property amounting to \$416,043.17, which were alleged to be excess taxes which had been assessed and levied and warrant therefor in the hands of said Collectors for collection.

The Motion to Dissolve the Injunction referred to was entitled "Motion to Dissolve Injunction and Dismiss the Petition" was filed herein on July 5th, 1940, and the denial of the Motion to Dismiss left continuing the Order of [fol. 2] April 11, 1940, restraining the Trustee from paying the aforesaid amount of taxes to the said County Collectors.

Dated this 24th day of September, 1940.

Jack Holt, Attorney General. Leffel Gentry, Assistant Attorney General. Hill, Fitzhugh & Brizzolara, Special Counsel for the State. Attorneys for Arkansas Corporation Commission, the Members thereof and the aforesaid 51 County Collectors of taxes referred to.

Receipt of copy of above Notice of Appeal acknowledged this — day of September 1940.

Jas. M. Chaney, Attorney for Guy A. Thompson,
Trustee

IN UNITED STATES DISTRICT COURT

[Title omitted]

STATEMENT OF ERRORS—Filed October 1, 1940

In order to comply with the Rule of Civil Procedure—Rule 75d—and the rules of the Circuit Court of Appeals for the Eighth Circuit—Title II, Rule 24—these appellants hereby make this statement of Points Relied upon and file it with the Designation of the Record, so that it may be part of the transcript.

[fol. 3] Point 1: The Order of April 11, 1940, complained of in the Motion to Dissolve restraining the Trustee from paying \$416,043.17 of taxes assessed and levied on the Trustee's property was in violation of Section 28 of the Judicial Code—United States Code Annotated, Title XXVIII, section 41, in that an order of assessment of a State Board was made after due notice and hearing, and the laws of Arkansas afford a plain, speedy and efficient remedy for the matters and things complained of in the Petition herein, and the matters for which relief is asked in the Petition are such as would give the District Court of the United States jurisdiction solely on the ground that the order was in repugnance to the Constitution of the United States, and the Injunction was improvidently granted and should be dissolved.

Point 2: The taxes alleged in the Petition to be excessive were assessed, levied and warrants for their collection in the hands of County Collectors were imposed by and pursuant to the laws of the State of Arkansas, and the Petitioner had a plain, speedy and efficient remedy in the Courts of Arkansas for relief for the matters complained of in the Petition, and an injunction against their collection was in violation of Section 28 of the Judicial Code, U. S. C. A., Title XXVIII, Section 41.

Point 3: The Petition alleges this court had authority under the Bankruptcy Act of 1938, section 64a Paragraph (4) to ascertain and determine the amount of taxes legally

due and owing, and seek under said section to have the court ascertain the amount due and owing. Whereas the taxes in question are Trustee's taxes and the amount thereof is a part of the necessary expense of preserving the estate of the bankrupt and are classified in Paragraph (1) of said Section 64. Whereas the said Paragraph (4) applies to taxes legally due and owing by the Bankrupt, not the Trustee. The Respondent further alleges that while the Trustee had a right to question the legality of the taxes levied, he was limited under Chapter IV, section 23, Paragraph (b) of the Bankruptcy Act of 1938 to suit in such courts only as the bankrupt could have brought the suit had this proceeding not been instituted and the Bankrupt could not have brought this suit other than in the courts, [fol. 4] either State or Federal, in the State of Arkansas.

Point 4: The Respondent alleges that said Section 64a is no part of Section 77 of the Bankruptcy Act of 1938, as the same is inconsistent therewith.

Point 5: The Petitioner failed to exhaust his administrative remedies before the Corporation Commission, in that it did not file a petition for review as provided in Section 2050 of Pope's Digest as the final administrative remedy provided for an aggrieved tax-payer.

Point 6: The Petitioner had a plain, speedy and efficient remedy provided by the statutes of Arkansas for the matters and things alleged in this Petition for relief therefrom by an appeal from said Corporation Commission to the Pulaski Circuit Court, a court of general jurisdiction in the County of the seat of government of the State of Arkansas, and thence to the Supreme Court of Arkansas, where a judicial review of the assessment could have been had, and without Petitioner having pursued said remedy the injunction was improvidently granted and should be dissolved.

Point 7: The Petitioner does not state a justiciable controversy, in that the allegations stating the basis of the assessment made by the Corporation Commission show that the action of the Corporation Commission in using said basis did not afford a judicial review of their action

other than a statutory right of appeal for setting aside the assessment on the grounds herein alleged.

Jack Holt, Attorney General; Leffel Gentry, Assistant Attorney General; Hill, Fitzhugh & Brizolara, Special Counsel for the State, Attorneys for Arkansas Corporation Commission, the members thereof, and the aforesaid 51 County Collectors of taxes referred to.

[fol. 5] Bond on appeal for \$250.00 approved and filed Sept. 24, 1940, omitted in printing.

[fol. 6] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF TRUSTEE RELATIVE TO TAXES FOR 1939 ASSESSED AGAINST PROPERTY OF THE TRUSTEE IN ARKANSAS—Filed April 11, 1940.

Comes now Guy A. Thompson, as Trustee of Missouri Pacific Railroad Company, Debtor, (said Trustee being hereinafter called the "Trustee" and said Railroad Company being hereinafter called the "Debtor"), and respectfully presents to the Court:

1. That by order heretofore made by this Court in this proceeding, the Trustee was authorized to pay out of funds coming into his hands all taxes upon the property of Debtor, for the payment of which the Debtor, or the Trustee, is obligated by law.

2. That certain questions hereinafter set forth have arisen with respect to the legality of the general taxes assessed and levied for the year 1939 against the property of the Trust Estate in the State of Arkansas, and with respect to the amount of such taxes which may be legally due and owing to the counties of the State of Arkansas through which the line of railroad formerly owned and operated by said Debtor, and now owned and operated by said Trustee, passes.

3. That by Section 64 of the Federal Bankruptcy Act, as amended June 22, 1938 (11 U. S. C. A., Sec. 104a (4)), it is provided that this Court shall make no order for the

payment of a tax assessed against the property of the Trust Estate in excess of the value of the Debtor's interest therein as determined by the Court, and that in case any question arises as to the amount or legality of any such tax, such question shall be heard and determined by this Court.

[fol. 7] 4. That the power to assess the property of the Trustee within the State of Arkansas for purposes of taxation resides in a commission created and existing under and by virtue of the laws of said state and designated and known as the Arkansas Corporation Commission. By the statutes of the State of Arkansas it is provided that all property, both real and personal, used in the operation of railroad companies shall be assessed for taxation by said Arkansas Corporation Commission. Said statutes further provide that the valuation of the property of all persons, firms, companies and corporations required by law to be assessed by said Commission shall be made upon the consideration of what a clear, fee-simple title thereto would sell for under conditions under which that character of property is usually sold, and further provide that as evidence tending to show what this value would be, the Commission, insofar as other evidence and information in its possession does not make it appear improper or unjust for it to do so, shall ascertain as nearly as it can and consider the market or actual value of all outstanding capital stock and funded debt and the income of such companies. The statutes further provide that when the Commission shall have ascertained the value of the property of any company which it is required to value, such valuation shall be entered in detail in a record to be kept for that purpose, and on or before the first day of July of each year, or as soon thereafter as practicable, it shall be the duty of the Commission to certify out, through its Chairman and Secretary, to the Assessor of each county in which is located or operated any property which it is required to assess so much of the value of said property as has been assigned or apportioned to said county and the districts and towns thereof, and that the Assessor shall enter upon the proper record the assessment so certified, and taxes shall be extended and collection thereof made in like manner as extensions and collections are made in the case of property locally assessed.

5. That Sections 2039 and 2041 of the statutes of the State of Arkansas provide that any person, firm, company, co-partnership, association or corporation engaged in various kinds of business as more fully set forth in said statutes, including any person engaged in the business of operating within, into, from or through said State of Arkansas a railroad as manager, lessee or receiver shall annually, on or before the first day of March in each year, in such form as may be prescribed by the Arkansas Corporation Commission make and deliver to said Commission a statement, under oath, showing in detail various facts, including the name of the company; the status of the company, whether person, firm, company, co-partnership, association or corporation, and under the laws of what state or country organized or incorporated; the location of its present office within and without Arkansas; the name and post-office address of the owner, president, secretary, general manager and agent having control of the company's affairs in the State of Arkansas; the par value of all outstanding capital stock and funded debt of every kind and the market, or if no market, the actual value thereof on the first day of January next preceding the day of said report; the total gross revenue, expense, net revenue and net income, separately, from utility operations, non-utility operations, and non-operating properties, for the next preceding calendar year both for the State of Arkansas and all states, including the State's due proportion of revenues, expenses and income from interstate business; the total value of all real estate and personal property owned or controlled by said company on the first day of January next preceding, showing separately that part used in connection with the daily operations of the company and that part used otherwise; a detailed statement of all real and personal property owned or controlled by the company and situated in Arkansas on the first day of January next preceding, giving description, location and value thereof, and showing separately that part used in connection with the daily operations of the company and that part used otherwise; and such other and additional information as to ownership, amount, kind, location, operation and value of property owned or controlled as the Commission may require; that the time for filing said report by said Trustee, as called for in said statutes, was by said Arkansas Corporation Commission extended until the first day of May,

1940, and that within said time said report showing all of the information called for in said statutes was by this Trustee duly filed with said Commission on forms provided [fol. 9] by it; that on or about November 13, 1939, said Corporation Commission, after examining returns on file and making certain investigations, determined what it considered the true, full cash value for assessment for taxation of the entire portion of the railway system or plant formerly owned by the Debtor, title to which is now vested in this Trustee, located within the State of Arkansas, which was, for the year 1939, the sum of \$28,050,000; immediately upon receipt of notice of said assessment, to-wit, on November 17, 1939, your Trustee advised said Corporation Commission of his dissatisfaction with said assessment and filed with said Arkansas Corporation Commission a formal notice of protest of said assessment and asked for a reconsideration and readjustment thereof; that thereafter a final hearing was held before said Commission on December 4, 1939, at which time this Trustee's protest was overruled by said Arkansas Corporation Commission and the final assessment of the properties of said Trustee in the State of Arkansas was set by said Commission at the sum of \$28,050,000, and that distribution and apportionment thereof was on December 5, 1939, certified by said Commission, through its Chairman and Secretary, to the Assessors of the several counties in the State of Arkansas in which the property of said Trustee is located, which distribution and apportionment was as follows:

County	Valuation
Arkansas	\$ 43,000
Ashley	899,291
Baxter	401,435
Boone	315,071
Bradley	47,241
Chicot	653,142
Clark	1,184,008
Clay	500,585
Conway	415,433
Craighead	310,869
Crawford	512,167
Crittenden	672,605
Cross	986,647
Desha	1,139,906

County	Valuation
Drew	404,352
Faulkner	362,563
[fol. 10] Franklin	560,698
Garland	371,131
Grant	164,781
Greene	609,717
Hempstead	678,453
Hot Spring	584,823
Howard	74,090
Independence	555,198
Izard	440,191
Jackson	1,004,406
Jefferson	911,703
Johnson	688,317
Lawrence	559,422
Lee	442,293
Lincoln	251,013
Logan	130,640
Lonoke	400,431
Marion	249,434
Miller	647,300
Monroe	345,910
Montgomery	88,615
Nevada	309,629
Ouachita	587,599
Phillips	869,617
Pike	158,479
Poinsett	271,857
Pope	524,513
Pulaski	2,394,676
Randolph	56,301
Saline	856,506
Sebastian—Greenwood Dist.	241,433
Ft. Smith Dist.	209,182
St. Francis	342,674
Union	886,491
White	1,306,003
Woodruff	428,159
	<hr/>
	\$28,050,000

6. That by the Constitution of the State of Arkansas in Article XVI, Section 5 thereof, it is provided that "all

[fol. 11] property subject to taxation shall be taxed according to its value (a), that value to be ascertained in such manner as the General Assembly shall direct, making the same equal and uniform throughout the state (b) no one species of property from which a tax may be collected shall be taxed higher than another species of property of equal value."

7. The value fixed by said Arkansas Corporation Commission as aforesaid represents an increase of \$3,765,570 over the assessed value of the properties of your Trustee in said state as fixed by said Commission for the year 1937, notwithstanding the fact that due to general business conditions and increased competition the traffic transported over the lines operated by your Trustee was constantly decreasing and the net earnings derived from said business was diminishing and, according to any true measure or criterion of value, the value of the properties of said Trustee in the State of Arkansas was growing less each month.

8. That said Arkansas Corporation Commission has failed and refused to disclose to your Trustee the basis upon which said assessment for the year 1939 in the sum of \$28,050,000 was arrived at, but said assessment is only \$64,960, or less than one-fourth of one per cent, less than the assessment upon your Trustee's properties in the State of Arkansas for the year 1938 which was in the amount of \$28,114,960 and that your Trustee was informed by said Arkansas Corporation Commission, and verily believes that said assessment for 1938 was based upon an allocation factor representing the per cent of said property in the State of Arkansas of 28.39411% of a system value of \$247,565,396, to which is applied an equalization factor of 40%, being the maximum per cent of full value at which other property is assessed by said Commission in the State of Arkansas; also that said system value of \$247,565,396 was arrived at by a composite average of various factors in which 25% consideration was given to stock and bond values for the five years preceding the year 1938; 25% to Capitalized Earnings for said period of five years at the rate of 6% per annum; 25% consideration to reproduction cost less depreciation as found by the I. C. C.; 12½% to [fol. 12] book value of said properties as carried on the books of said Missouri Pacific Railroad Company and 12½% consideration to Gross Revenue for said five year

period (the source of said Gross Revenue and the properties from which obtained being unknown to your Petitioner), by reason whereof and by reason of the close approximation of said assessment for 1939, in the sum of \$28,050,000, to said assessment for the year 1938 in the sum of \$28,114,960, your Trustee states that said assessment for the year 1939 is based on a system value of \$246,970,234 arrived at by a composite average of the same factors as hereinabove set forth.

Your Petitioner states that said Interstate Commerce Commission value is based on the reproduction cost less depreciation of said properties as found by said Commission and that the book value of said properties to which a consideration of $12\frac{1}{2}\%$ is applied by said Corporation Commission in finding its said system value, represents the original cost of said properties as shown on the books of the Missouri Pacific Railroad Company.

Your Petitioner further states that the result of giving a consideration of 25% to said Interstate Commerce Commission value and of $12\frac{1}{2}\%$ to said book value ascribes a total consideration of $37\frac{1}{2}\%$ to the original cost of said properties and thereby gives to said original cost an entirely disproportionate consideration as contrasted with the market value of stocks and bonds and Capitalized Earnings of said properties which are more dependable and accurate bases for measuring the present day value of said properties and the price or sum for which said properties would sell at the present time.

Your Petitioner further states and avers that said basis of valuation as employed by said Corporation Commission is erroneous in that consideration is given therein to the Gross Revenue of certain properties which, your Petitioner avers, is no fair or proper criterion in the determination of true value.

9. In fixing the value as aforesaid of your Petitioner's properties for the year 1939 the Arkansas Corporation Commission ascribed an undue and improper weight to the [fol. 13] cost of reproducing said properties and failed to give due consideration to the collapse of values of all classes of property, including properties of railroad common carriers, which began in 1929 and has continued ever since, and to the great economic changes which have taken place within that period affecting the value of all classes of prop-

erty, including the properties of your Trustee, as the result of the nation-wide general business depression.

Your Petitioner further avers that said Arkansas Corporation Commission, in fixing said value, failed to give due consideration to the increased competition of other forms of transportation which has greatly reduced the earnings of the Trust Estate and caused an enormous loss in the value of said properties.

10. Your Petitioner states and avers that upon the basis of fair and accurate methods for the determination of the system value of said properties and the proper allocation thereof to the State of Arkansas with an equalization factor of 40%, the total value of all properties owned and used by your Petitioner in the State of Arkansas included in said assessment, as fixed by said Arkansas Corporation Commission for the year 1939, should not exceed the sum of \$16,830,000.

11. That the respective county officers of the several counties hereinbefore mentioned, through which the Trustee's line of railroad extends, have duly extended on the assessment rolls of said respective counties the assessment so certified by said Arkansas Corporation Commission, and have applied on said tax rolls of said counties the various levies in effect for state, county, city, town, school district and other purposes, and in accordance with the statutes in such case made and provided, the tax lists and tax warrants have been issued and delivered directing the Tax Collectors of the several counties to collect the taxes for 1939 arising from the tax rolls made up as aforesaid, and said Tax Collectors now have in their possession said tax rolls made up as aforesaid and will endeavor to collect the taxes levied on said unjust and illegal values of the property of the Trustee made as aforesaid by said Arkansas Corporation Commission.

[fol. 14] That the taxes levied against Trustee's property in each of said counties through which the Trustee's line of railroad runs are as set forth in the following statement, wherein is shown the increase in taxes in each county resulting from said unjust and illegal and increased valuation certified by said Arkansas Corporation Commission over the fair and reasonable value of properties of said Trustee in each of said counties.

[cols. 15-16]

County	Tax Collector	Valuation	Statutory Taxes Based on Corporation Commission's Assessment	Statutory Taxes Based on Maximum Valid Assessment	Excess
Arkansas	Lloyd La Fargue	\$43,000	\$1,446.95	\$868.17	\$578.78
Ashley	J. W. Spivey	899,291	32,070.68	19,242.41	12,828.27
Baxter	Jim Martin	401,435	13,066.98	7,840.19	5,226.79
Boone	Hugh Burlison	315,071	11,211.89	6,727.13	4,484.76
Bradley	C. W. Hickman	47,241	1,720.20	1,032.12	688.08
Chicot	C. Merritt	653,142	23,548.17	14,128.90	9,419.27
Clark	A. N. Shaw	1,184,008	43,908.51	26,345.11	17,563.40
Clay	Dan McLeod	500,585	18,709.70	11,225.82	7,483.88
Conway	Elmer Thomas	415,433	17,418.44	10,451.06	6,967.38
Craighead	Leon G. Brown	310,869	10,185.58	6,111.35	4,074.23
Crawford	Fred Patton	512,167	19,085.88	11,451.53	7,634.35
Crittenden	J. H. Curlin	672,605	22,675.26	13,605.16	9,070.10
Cross	C. M. Stacy	986,647	34,667.24	20,800.34	13,866.90
Deaha	H. L. Clayton	1,139,906	49,969.77	28,613.98	21,355.79
Drew	W. C. Cruce	404,352	14,438.92	8,963.35	5,475.57
Faulkner	R. E. Speaker	362,563	14,421.13	8,652.68	5,768.45
Franklin	Champ Crawford	560,698	18,995.52	11,397.31	7,598.21
Garland	Mack Wilson	371,131	13,794.39	8,270.63	5,513.76
Grant	Wilbur B. Paxton	164,781	5,877.37	3,526.42	2,350.95
Greene	Barney Elmore	609,717	21,954.81	13,172.89	8,781.92
Hempstead	Clarence E. Baker	678,453	24,934.07	14,940.44	9,973.63
Hot Spring	T. S. Fisher	584,823	21,714.81	13,028.89	8,685.92
Howard	Jones Floyd	74,090	2,746.82	1,648.09	1,098.73
Independence	Forrest Jeffery	555,198	20,062.32	12,037.39	8,024.93
Iard	D. O. Johnson	440,191	15,913.45	9,548.07	6,365.38
Jackson	Edwin McCall	1,004,406	37,331.70	22,399.02	14,932.68
Jefferson	Garland Brewster	911,703	31,568.79	18,941.27	12,627.52
Johnson	Carl Arrington	688,317	28,056.09	16,833.65	11,222.44
Lawrence	Cleo Moody	559,422	20,619.88	12,371.93	8,247.95
Lee	S. C. Langston	442,293	15,877.84	9,526.70	6,351.14
Lynch	Tebo Cogbill	251,013	8,078.56	4,847.14	3,231.42
Logan	W. W. Carolan	130,640	4,837.52	2,902.51	1,935.01

Lonoke.....	R. E. Brians.....	400,431	14,504.69	8,702.82	5,801.87
Marion.....	Gus McCracken.....	249,434	9,050.31	5,430.19	3,620.12
Miller.....	Jewell Evers.....	647,300	26,752.07	16,061.24	10,700.83
Monroe.....	H. K. McKenzie.....	345,910	12,325.27	7,395.16	4,930.11
Montgomery.....	John Johnson.....	88,615	3,384.68	2,030.81	1,353.87
Nevada.....	Brad Bright.....	309,629	11,088.91	6,653.35	4,435.56
Onachita.....	Edgar Pryor.....	587,699	21,759.49	13,055.69	8,703.80
Phillips.....	F. F. Kitchens.....	869,617	31,327.26	18,796.36	12,530.90
Pike.....	W. E. Branch.....	158,479	6,460.48	3,876.29	2,584.19
Poinsett.....	C. T. Sullivan.....	271,867	10,211.92	6,127.15	4,084.77
Pope.....	D. A. Bewley.....	524,513	19,866.58	11,919.95	7,946.63
Pulaski.....	L. B. Branch.....	2,394,676	92,181.44	55,308.86	36,872.58
Randolph.....	Roland Morris.....	56,301	2,074.84	1,244.90	829.94
Saline.....	M. P. Crow.....	856,506	30,990.13	18,594.08	12,396.05
Sebastian.....					
Greenwood Dist.....	Jack Pace.....	241,433	8,413.38	5,048.03	3,365.35
Ft. Smith Dist.....	Jack Pace.....	209,182	8,293.30	4,975.98	3,317.32
St. Francis.....	John I. Jones.....	342,674	12,623.97	7,574.38	5,049.59
Union.....	Grady R. Woolley.....	886,491	32,619.73	19,571.84	13,047.89
White.....	Barney Harsteel.....	1,306,003	46,580.42	27,948.25	18,632.17
Woodruff.....	E. T. Ramsey.....	428,169	15,280.09	9,168.05	6,112.04
Totals.....		\$28,060,000	\$1,036,688.20	\$620,645.03	\$416,043.17

[fol. 17] The foregoing amounts do not include land locally assessed, the valuation of, and the taxes upon which, were not fixed by said Arkansas Corporation Commission.

12. That it is provided in the statutes of the State of Arkansas, Section 13826, Pope's Digest for 1937, that taxes shall become due and payable, one-fourth on or before the third Monday in April; one-fourth on or before the third Monday in July and the remaining one-half on or before the First of October in each year; and that all taxes remaining unpaid after the periods above specified shall be considered as delinquent and a penalty of 10% assessed against the taxpayer failing to pay taxes within the time limits specified.

13. That your Trustee has been advised by Counsel, and therefore states, that said action of said Corporation Commission of the State of Arkansas in increasing the assessment of Trustee's properties within said state as aforesaid, was illegal, unconstitutional and invalid, and should be set aside and disregarded for the following reasons:

(a) Said action of said Corporation Commission, was arrived at by giving undue consideration to original costs and ignoring the fact that, due to general business conditions, the material reduction in values of all classes of property and the virtual collapse of values of railroad property, due in part to the rapid increase of competition of transportation by motor vehicles, water and air transport and pipe lines and electric power lines, with resultant great and permanent reduction of the earnings of the Trustee's properties and the great reduction in the actual market value of said properties, all of which facts were well known to said Commission, the assessed value of Trustee's properties should in truth and in fact be materially reduced beneath the assessment for previous years whereas the proposed assessment made by said Commission and certified to the Collectors of said several counties as aforesaid involves an actual increase in the assessment of said properties in the sum of \$3,765,570 or more than 16% above the assessment for the year 1937.

(b) Said action of said Corporation Commission will result in unlawfully exacting from the Trustee as taxes on [fol. 18] said properties in Arkansas an amount greatly in excess of Trustee's fair and equitable share of the tax burden

of said state, in violation of Section 5 of Article XVI of the Constitution of the State of Arkansas, which provides that all property shall be taxed according to its value and that no one species of property from which a tax may be collected shall be taxed higher than another species of property of equal value, and that all values shall be ascertained so as to make same equal and uniform throughout the state. The Trustee's property in Arkansas has been assessed for 1939, and for many years prior to 1939, at more than its full and actual value after giving consideration to an equalization factor of the same amount as that applied to other classes of property in said state. Such discrimination has been arbitrary and has been practiced over a period of years with the result of compelling the Debtor and the Trustee to pay grossly excessive, unequal and disproportionate shares of the taxes of said counties and permitting other taxpayers in said counties to escape payment of a fair, equal and just share of the taxes levied in said counties; that over assessment has been so persistent and so material and has imposed upon said Trustee, with respect to taxes upon properties owned and operated by him in said State of Arkansas, so undue and disproportionate a share of the taxes in said state as to amount to a constructive fraud and to deprive said Trustee of his property without due process of law and to deny the said Trustee the equal protection of the law, all in violation of the Fourteenth Amendment to the Constitution of the United States.

14. That it is in the interest of the Trust Estate and of all parties interested that a determination of the amount and legality of the taxes to be paid by the Trustee on said property for 1939 may be had without unnecessary delay in order that it may be ascertained whether said property must bear said excessive and unlawful exaction of \$416,043.17, which is the amount of taxes in dispute, arising out of the 1939 assessment hereinbefore complained of; that the taxes based on said assessment now constitute a lien on the property of the Trustee in Arkansas and such lien casts a cloud upon the Trustee's title to said property, the removal of which will be a necessary step in the consummation of Debtor's reorganization.

[fol. 19] Wherefore, the Trustee respectfully prays:

(1) That this Court hear and determine the question of the amount and legality of the taxes assessed for the year

1939 against the property of the Trustee in Arkansas, and if the Court be so advised, that such matter be referred to a Special Master as provided in Section 77 (c) (13) of the Bankruptcy Act, with direction to hear the evidence of all interested parties with respect to said question, under such reasonable rules and after such notice as the Court may prescribe, and to render his report and findings thereon for such action as to the Court may seem meet and proper.

(2) That the Trustee be authorized to pay or tender payment, to the Collectors of said respective counties, by April 15, 1940, or as soon thereafter as possible, one-fourth of the ad valorem taxes (payable in installments) plus all of any special improvement taxes (not payable in installments) based upon the maximum proper assessment of said properties as set forth in paragraph 11 of this Petition, in the aggregate sum of \$620,645.03, or the sum of \$157,665.54, and, on or before July 15, 1940, to pay or tender payment to said Collectors an additional one-fourth of said ad valorem taxes and on or before October 1, 1940, to pay or tender payment to said Collectors the remaining one-half of the ad valorem taxes based upon the maximum proper assessment of said properties as set forth in paragraph 11 of this Petition, but, pending the determination by this Court of the amount and legality of the taxes assessed against the property of the Trustee in the said respective counties for the year 1939, to withhold and refrain from paying to the Collectors of said counties any further taxes based on the assessment heretofore made by said Corporation, Commission, until further order of this Court.

(3) That the Trustee have such other authority and direction in the premises, as to the Court may seem proper.

Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor. Russell L. Dearmont, James M. Chaney, Counsel for Trustee.

[fol. 20] *Duly sworn to by T. M. Corwin. Jurat omitted in printing.*

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER SETTING FOR HEARING PETITION OF DEBTOR'S TRUSTEE
RELATIVE TO TAXES FOR 1939 ASSESSED AGAINST PROPERTY
OF THE TRUSTEE IN ARKANSAS, AND AUTHORIZING TRUSTEE
TO TENDER AMOUNTS CONCEDED BY HIM TO BE DUE—Filed
April 11, 1940

[fol. 21] Guy A. Thompson, as Trustee of the Debtor, Missouri Pacific Railroad Company, having this day filed herein and presented to the Court and its Judge his petition entitled "Petition of Trustee relative to taxes for 1939 assessed against property of the Trustee in Arkansas," it is

Ordered:

(1) That said petition be, and hereby is, set for hearing before the Court and the Judge thereof at its court room at St. Louis, Missouri, on the 3rd day of May, 1940, at ten o'clock A. M., or as soon thereafter as the matter can be heard.

(2) That said Trustee shall give notice of said hearing, which notice is hereby found and declared to be reasonable and sufficient:

(a) By sending or causing to be sent, by United States mail, postage prepaid, to all parties who customarily receive printed copies of the record in this proceeding, or their attorneys of record, at least 15 days prior to the date herein set for the hearing, true copies of said petition and of this order;

(b) By sending or causing to be sent through registered mail, postage prepaid, at least 15 days prior to date herein set for hearing, a true copy of said petition and of this order, addressed to the Attorney General for the State of Arkansas, to each member of the Arkansas Corporation Commission and to each of the County Collectors of the fifty-one counties of the State of Arkansas in which taxes against the property of the Trustee have been levied for the year 1939.

(3) That the Trustee be, and he is hereby authorized to pay, or to tender payment to the Collectors of the counties hereinafter named, by April 15, 1940, or as soon thereafter as possible, one-fourth of the ad valorem taxes (payable in installments) plus all of any special improvement taxes (not payable in installments) based upon the maximum [fol. 22] proper assessment of said properties as conceded by said Trustee, and on or before July 15, 1940, an additional one-fourth of the ad valorem taxes based upon such maximum proper assessments, and on or before October 1, 1940, to pay or tender payment to said Collectors the remaining one-half of the ad valorem taxes based upon said maximum proper assessment—said several counties and the amounts to be paid as hereinbefore set forth, being as follows:

County	Tax Collector	Due 4/15/40	Due 7/15/40	Due 10/1/40	Total
Arkansas	Lloyd LaFargue	\$217.05	\$217.04	\$434.08	\$868.17
Ashley	J. W. Spivey	4,810.60	4,810.60	9,621.21	15,242.41
Baxter	Jim Martin	1,960.05	1,960.05	3,920.09	7,840.19
Boone	Hugh Burlison	1,681.78	1,681.78	3,363.57	6,727.13
Bradley	C. W. Hickman	258.03	258.03	516.06	1,032.12
Chicot	C. Merritt	3,532.23	3,532.23	7,064.44	14,128.90
Clark	A. N. Shaw	6,586.28	6,586.28	13,172.55	26,345.11
Clay	Dan McLeod	2,806.45	2,806.46	5,612.91	11,225.82
Conway	Elmer Thomas	2,612.75	2,612.77	5,225.77	10,451.06
Craighead	Leon G. Brown	1,527.84	1,527.84	3,055.67	6,111.35
Crawford	Fred Patton	2,862.88	2,862.88	5,725.77	11,451.53
Crittenden	J. H. Curlin	3,401.29	3,401.29	6,802.58	13,605.16
Cross	C. M. Stacey	5,200.09	5,200.09	10,400.16	20,800.34
Desha	H. L. Clayton	9,431.61	9,431.61	18,863.22	37,726.42
Drew	W. C. Cruce	2,165.84	2,165.84	4,331.67	8,663.35
Faulkner	R. E. Speaker	2,163.17	2,163.17	4,326.34	8,652.68
Franklin	Champ Crawford	2,849.33	2,849.33	5,698.65	11,397.31
Garland	Mack Wilson	2,067.66	2,067.66	4,135.31	8,270.63
Grant	Wilbur B. Paxton	881.61	881.60	1,763.21	3,526.42
Greene	Barney Elmore	3,293.22	3,293.22	6,586.45	13,172.89
Hempstead	Clarence E. Baker	3,924.86	3,924.86	7,849.72	15,699.44
Hot Spring	T. S. Fisher	3,257.22	3,257.22	6,514.45	13,028.89
Howard	Jones Floyd	412.03	412.02	824.04	1,648.09
Independence	Forrest Jeffery	3,050.74	2,995.55	5,991.10	12,037.39
Izard	D. O. Johnson	2,387.02	2,387.02	4,774.03	9,548.07
Jackson	Edwin McCall	5,599.75	5,599.76	11,199.51	22,399.02
Jefferson	Garland Brewster	4,735.32	4,735.32	9,470.63	18,941.27
Lawrence	Carl Arrington	4,208.41	4,208.41	8,416.83	16,833.65
Lee	Cleo Moody	3,092.98	3,092.98	6,185.97	12,371.93
Lincoln	S. C. Langston	2,381.67	2,381.67	4,763.36	9,526.70
Logan	Tebo Cogbill	1,211.79	1,211.78	2,423.57	4,847.14
Lonoke	W. W. Carolan	725.63	725.63	1,451.25	2,902.51
Marion	R. E. Brians	2,175.71	2,175.70	4,351.41	8,702.82
	Gus McCracken	1,357.55	1,357.55	2,715.09	5,430.19

County	Tax Collector	Due 4/15/40	Due 7/15/40	Due 10/1/40	Total
Miller	Jewell Evers	4,012.81	4,012.81	8,025.62	16,051.24
Monroe	H. K. McKenzie	1,848.79	1,848.79	3,697.58	7,395.16
Montgomery	John Johnson	507.70	507.70	1,015.41	2,030.81
Nevada	Brad Bright	1,663.34	1,663.34	3,326.67	6,653.35
Quachita	Edgar Pryor	3,263.92	3,263.92	6,527.85	13,055.69
Phillips	F. F. Kitchens	4,699.09	4,699.09	9,398.18	18,796.36
Pike	W. E. Branch	969.07	969.07	1,938.15	3,876.29
Poinsett	C. T. Sullivan	1,531.79	1,531.79	3,063.57	6,127.15
Pope	D. A. Bewley	2,979.99	2,979.99	5,959.97	11,919.95
Pulaski	L. B. Branch	13,827.22	13,827.21	27,654.43	55,306.86
Randolph	Roland Morris	311.23	311.22	622.45	1,244.90
Saline	M. P. Crow	4,648.52	4,648.52	9,297.04	18,594.08
Sebastian	Jack Pace	1,262.01	1,262.01	2,524.01	5,048.03
Greenwood Dist.	Jack Pace	1,244.00	1,243.99	2,487.99	4,975.98
Ft. Smith Dist.	John I. Jones	1,893.59	1,893.59	3,787.20	7,574.38
St. Francis	Grady R. Woolley	4,892.96	4,892.96	9,785.92	19,571.84
Union	Barney Hartsell	6,987.06	6,987.06	13,974.13	27,948.25
White	E. T. Ramsey	2,292.01	2,292.01	4,584.03	9,168.05
Woodruff					
Totals		\$157,665.54	\$154,326.49	\$308,653.00	\$620,645.03

[fol. 25] and that the Trustee, until further order of this Court, be, and he is hereby, authorized and order to withhold, and refrain from paying to the Collectors of said respective counties, any additional taxes for the year 1939 based on the assessment heretofore made upon the properties of the Trustee in said state by the Corporation Commission of the State of Arkansas, pending the determination by this Court of the amount and legality of the taxes assessed against the property of the Trustee in said respective counties for the year 1939.

Done this 11th day of April, 1940.

By the Court:

Geo. H. Moore, Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISSOLVE INJUNCTION AND DISMISS PETITION—
Filed July 5, 1940

Comes the Respondent herein, the Arkansas Corporation Commission, hereinafter referred to as "Respondent" or the "Commission," on behalf of itself and the fifty-one (51) Tax Collectors in Arkansas where taxes are assessed against the Missouri Pacific Railroad Company, pursuant [fol. 26] to Order of said Commission, and moves the Court to dissolve the Order of April 11th, 1940, wherein the Trustee was directed to withhold and refrain from paying the taxes assessed by the Commission in said several counties, which were in excess of the amounts which the Trustee alleged should have been proper assessments in said counties.

The difference between the assessed taxes authorized to be paid under said Order and the amount determined by the Commission was the sum of \$416,043.17, the collection of which was effectually enjoined by said Order, and for cause thereof alleges:

That on April 11th, 1940 the Trustee presented to this Court a petition relative to the taxes assessed against the property of the Trustee in Arkansas.

That the Petition bases jurisdiction in this court to hear and determine the matters and things therein set forth solely on Section 64 of the Bankruptcy Act of 1938 (USCA 104a (4)).

The petition alleged that the proposed bases of the assessment made by the Corporation Commission for ascertaining the System Value and the bases for allocation to Arkansas of its proportion of the System Value and the Bases of Equalization of such value with the assessment of other property in Arkansas.

The Petition further alleged the proper bases for assessing the System Value and alleges that the purported bases used by the Commission was wrong for reasons therein alleged, and uses in its computation of the taxes which it should pay to the State of Arkansas the same allocation factor and Equalization factor which he alleged that the Corporation Commission used, thereby leaving the only issue for adjudication the value of its system, being the difference in that found by the Corporation Commission and that alleged in the Petition to be the true system value.

The Petition alleged that the System Value found by the Commission was \$246,970,234 resulting in a state valuation of \$28,050.00; that the valuation in Arkansas on the [fol. 27] proper bases for the System Value would not exceed \$16,830,000 and pray for authority to pay the taxes upon the valuation in Arkansas of \$16,830,000.00, and for an order of the Court requiring the Trustee to withhold and refrain from paying the tax Collectors in the 51 counties in Arkansas, wherein the taxes were levied, the difference between the taxes upon the System Value found by the Commission and that alleged by the Petition to be the correct value amounting to the sum of \$416,043.17.

Whereupon the Court on April 11, 1940 authorized the payment of the taxes on the valuation alleged by the Petition and regarding said excess which was ordered withheld of \$416,043.17 made this Order, to-wit:

"And that the Trustee, until further order of this Court, be, and he is hereby, authorized and ordered to withhold, and refrain from paying to the Collectors of said respective counties, any additional taxes for the year 1939 based on the assessment heretofore made upon the properties of the Trustee in said state by the Corporation Commis-

sion of the State of Arkansas, pending the determination by this Court of the amount and legality of the taxes assessed against the property of the Trustee in said respective counties for the year 1939."

That said Order suspending and restraining the payments of the taxes assessed for collection in said several counties over and above the amount proposed by the Trustee has continued in full force and effect from said date until now, and has effectually enjoined the collection of said taxes, amounting to the aforesaid sum of \$416,043.17.

The Respondent moves the Court to dissolve said Injunction of April 11th, 1940 and dismiss the Petition for each of the following reasons, to-wit:

First. That said Order restraining the payment of \$416,043.17 taxes assessed against the Trustee's properties in 51 counties in Arkansas in amounts set forth, is in violation of Section 24 of the Judicial Code (USCA, Title 28, Section 41) wherein the Amendments of 1934 and 1937 are included.

[fol. 28] That the final assessment of the Trustee's property on December 4th, 1939 was an order of a Board of the State where reasonable notice was given by said Board and where full hearing before it was had and where a plain, speedy and efficient remedy was available to the Petitioner in the courts in the State of Arkansas for the matters and things alleged in his petition herein as constituting the assessment invalid by pursuing the remedies therefor in Sections 2019 and 2020 of Pope's Digest.

This Respondent alleges pursuant to said Act of Congress no District Court shall have jurisdiction of such suit.

Wherefore, it prays that said Injunction be dissolved and the Petition dismissed.

Second. This Respondent alleges that the assessment made by it on December 4, 1939 was the basis for a tax imposed by and pursuant to the laws of the State, and that taxes accruing in each county thereunder as set forth in the Petition herein were taxes imposed by the laws of the State of Arkansas, and in the hands of the Collectors of each of said counties to collect the same from the Trustee.

The Respondent further alleges that this Order of April 11, 1940, suspends, enjoins and restrains the assessment levied and collection of the tax as above stated, and that the Trustee as tax payer has a plain, speedy and efficient

remedy in the courts in Arkansas for relief against said taxes upon the grounds he alleged in his Petition by pursuing the remedies provided in Sections 2019 and 2020 of Pope's Digest.

Wherefore, the Respondent alleges that pursuant to said Act of 1937 no District Court of the United States has jurisdiction to entertain such suit, and it prays that this Order enjoining, suspending and restraining the collection of said taxes as aforesaid, be dissolved and this Petition dismissed.

Third. The Petition is based on the assumed authority given the District Court in Bankruptcy under Section 64a, Paragraph 4 of the Bankruptcy Act of 1938.

[fol. 29] This Respondent alleges that said section is a section of the General Bankruptcy Act establishing the priority of debts in a bankrupt estate, which is the necessary office of the Bankruptcy Court in the liquidation of estates, and that if applicable to proceedings under Section 77, which will be referred to hereafter, it does not apply to the \$416,043.17 of taxes, the payment of which is restrained. That said taxes are taxes against the Trustee and are not taxes against the bankrupt estate, which are the taxes over which this court is given jurisdiction to establish priority and to determine the legality and amount thereof, in order to properly ascertain the priority in the liquidation of such estates.

The Judicial Code, Section 65, USCA, Title 28, Section 124, provides that whenever a cause is pending in any court of the United States and there shall be a Receiver or manager in possession of such property, he shall manage and operate the same according to the requirements of all valid laws of the state in which said property is situated, in the same manner that the owner would be bound if in possession thereof.

The Respondent alleges that the Trustee is in possession of the property of the Debtor of the Debtor in Arkansas, operating the same under orders of this Court and said Act is applicable to him. That there was an amendment to said section, which is 124a, Title 28, providing that a Trustee, inter-alia, appointed by any United States Court, who is authorized by the court to conduct any business, or who does conduct any business, shall be subject to all state and local taxes applicable to such business the same as if such business were conducted by an individual or corpora-

tion. That this Trustee is authorized to conduct this business by this Court and does conduct it, and he is subject to all state and local taxes applicable to said business the same as if such business were conducted by an individual or corporation. That the taxes assessed herein are not assessed against the Missouri Pacific Railway Company; they are assessed against the Trustee, and such taxes assessed against him are part of the expenses which section 64a of said Bankruptcy Act (if applicable at all to proceedings [fol. 30] under section 77 to which reference will later be made), shall be first in priority.

This Respondent alleges that these taxes now assessed accrued subsequent to the filing of the Petition and appointment of the Trustee.

This Respondent further alleges that the second and third priorities established in said 64a are not relevant here, and the 4th Priority upon which the Petitioner relies in his Petition for authority of this Court to review this assessment provides:

“Taxes legally due and owing by the Bankrupt to the United States, or any state or sub-division thereof.”

That if the State of Arkansas, or any political sub-division have taxes due it by the Missouri Pacific Railway Company prior to bankruptcy, the legality and amount of such taxes would be a proper subject of jurisdiction of this Court, if said section is applicable to proceedings under section 77; and it is in the context and meaning not applicable to the taxes assessed against the Trustee subsequent to the filing of the Petition; and those taxes are assessed against him, as any other individual or corporation in Arkansas, and he is required to pay the same subject only to his right to attack in the courts of Arkansas the legality of said taxes on such grounds as he has set forth in his Petition.

This Respondent alleges that no Federal or other court has jurisdiction to pass upon the legality of the assessments made by the Corporation Commission of Arkansas except the courts of Arkansas wherein a plain, speedy and efficient remedy is provided for all such matters as this Trustee alleges has occurred in the making of said assessment.

This Respondent further alleges that the General Bankruptcy Act of 1938, Chapter IV, Section 23, dealing with

the jurisdiction of the United States and State Courts, paragraph "b" is as follows:

"Suits by the receiver and the trustee shall be brought or prosecuted only in the courts where the bankrupt might have brought or prosecuted them if proceedings under [fol. 31] this Act had not been instituted, unless by consent of the defendant, except as provided in sections 60, 67, and 70 of this act."

This Respondent alleges that said section is applicable to this Trustee, and it is consistent with the proceedings under section 77 to incorporate therein Paragraph (b), section 23.

Wherefore, The Respondent prays that the Restraining Order be dissolved and this suit dismissed, as beyond the jurisdiction of this court.

Fourth. This Respondent alleges that 64a of the Bankruptcy Act of 1938 is no part of section 77 of the Bankruptcy Act, and no part of it is applicable to proceeding under section 77 of the Bankruptcy Act.

Paragraph (1) of Subdivision 13 of Section 77, provides that in proceedings under this section "and consistent with the provisions thereof" the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors and all persons with respect to the debtor and his property shall be as if a voluntary petition for adjudication had been filed and a decree of adjudication entered on the day the debtor's petition was filed.

Section 64a refers entirely to unsecured creditors who are to be paid in advance of payment of dividends and establishes the priority among them, and is inconsistent with railroad reorganization proceedings where the payment of claims secured and unsecured and their priorities is effectuated through consent of two-thirds of the creditors after approval by the Interstate Commerce Commission and the court, save in exceptional cases where the same may be approved by the court, where it is fair and equitable and does no injustice under the bankruptcy power.

Under section 77 there can be no liquidation except through adoption of the Plan, either through creditors and stockholders' approval or enforced adoption by the Court. [fol. 32] Under this Section if the Plan of Reorganization fails, the action is dismissed and there is no place ever in

a railroad reorganization proceedings for the application of 64a.

Wherefore, said 64a invoked in this Petition as the sole basis of jurisdiction of this court is not applicable, and the restraining order, restraining the payment of the taxes involved here was improperly granted and its dissolution and dismissal of the Petition is prayed.

Fifth. The Petition fails to allege that the Trustee exhausted his administrative remedy before seeking judicial relief herein. That Section 2050 of Pope's Digest provides an administrative remedy for review of an assessment after it is completed within 30 days, upon presentation for hearing thereof of a petition for review and the statute provides time for the Commission to certify changes to the Counties which may be made by it on hearing the petition for review. The failure of the petitioner to set forth the exhaustion of said administrative remedy leaves no standing for judicial review thereof, and the petition fails therefore to state a cause of action for judicial review.

Wherefore, the Respondent prays that said Injunction be dissolved and the Petition dismissed.

Sixth. The Petition alleges that the System Value of \$246,970.00 was arrived at by this Respondent "By a composite average of various factors in which 25% consideration was given to stock and bond values for the five years preceding the year 1938; 25% to Capitalized Earnings for said period of five years at the rate of 6% per annum; 25% consideration to reproduction cost less depreciation as found by the I. C. C.; 12½% to book value of said properties as carried on the books of said Missouri Pacific Railroad Company and 12½% consideration to Gross Revenue for said five-year period."

That each and every factor alleged to have been used by the Respondent was a factor commonly considered by commissions and courts in ascertaining value in taxation, rate making and condemnation proceedings.

[fol. 33] These Respondents are required by the statutes of Arkansas as found in section 2044 of Pope's Digest to consider each and every of the factors alleged in the Petition to have been considered by it in making this assessment unless other evidence and information in its possession renders it in their judgment improper or unjust to do so.

These factors and their use are described in the Government Publication entitled "Public Aids to Transportation," written by Charles S. Morgan, Director, Coordinator's Section of Research, and this statement is found in volume 2, at page 200:

"The different State assessing bodies use different methods of valuation. Few, if any, State boards confine themselves to only one formula for valuation, the great majority using combinations of two or more. The better known formulas are so-called physical valuation, cost of reproduction new less depreciation, original cost, book value, gross receipts, market value of stocks and bonds, and capitalization of net income."

The author then defines each factor and the criticisms leveled against each, and then states:

"These criticisms are essentially sound, but they can be overcome in large measure by a valuation method which employs a combination of two or more formulae. Further, the operation of valuation methods is not confined to the bare outlines mentioned, but in some instance involves consideration of average income, stock and bond prices, or physical valuations over a period of years. Irregularities are thus to some extent ironed out."

Assuming the Petition charges over-assessment, such charge would not invalidate the assessment under the Equal Protection of the due process clause of the Fourteenth Amendment.

The Respondent states that the Petition alleges that it used the aforesaid factors in making the assessment, and the Respondent alleges that these factors are commonly used by Commissions and Courts as evidence of value and are required to be considered by the Arkansas statute, and the assessment it is alleged is produced by a composite [fol. 34] thereof, and these Respondents allege that such composite of the various factors as used by Commissions and Courts eliminates the error that would occur by the use of one or more of these factors as the sole evidence of value.

Therefore, these Respondents allege that the Petition does not state a subject for judicial review and fails to state a cause of action, and the Injunction was improvidently granted.

Wherefore, the Respondents pray the Injunction be dissolved and the Petition dismissed.

The Arkansas Corporation Commission, on Behalf of Itself and the County Collectors, by Jack Holt, Attorney General of the State of Arkansas, Leffell Gentry, Assistant Attorney General of the State of Arkansas. Hill, Fitzhugh & Brizzolara, Special Counsel.

IN DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN
DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI

In the Matter of Missouri Pacific Railroad Company, Debtor

In the Matter of the Petition of the Trustee Relative to
Taxes for 1939 Assessed Against Property of the Trustee
in Arkansas

OPINION OF COURT ON OVERRULING OF MOTION OF ARKANSAS
CORPORATION COMMISSION TO DISMISS PETITION OF TRUSTEE
—Filed September 24, 1940.

This matter is now before the Court on a motion filed by the State of Arkansas to dismiss, on certain jurisdictional [fol. 35] grounds as hereafter more fully stated, a petition filed by Guy A. Thompson, Trustee, asking this Court to hear and determine the amount and validity of taxes assessed against the railroad properties of the Trustee in the State of Arkansas for the year 1939.

The petition as filed by the Trustee, on April 11, 1940, prayed for authority to pay or tender taxes to the Collectors of the several counties in said State, due in the year 1939, in the aggregate sum of \$620,645.03. As to the excess over that amount, or \$416,043.17, making up the total tax of \$1,036,668.20 resulting from the assessed value of \$28,050,000.00 set by the Arkansas Corporation Commission upon the Trustee's railroad properties in Arkansas for the year 1939 (upon which the taxes payable in 1940 are based) the petition prays that this Court hear and determine the amount and validity thereof.

The petition alleges that said assessed value of \$28,050,000.00 as set by the Arkansas Corporation Commission, is discriminatory, in violation of Section 5, of Article XVI of the Constitution of Arkansas; greatly in excess of

the fair market value of said properties, which the Arkansas statute provides shall be the basis for assessment, and would impose upon the Trustee so undue and disproportionate a share of the taxes in Arkansas as to deprive the Trustee of his property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

Guy A. Thompson is the duly appointed, qualified and acting Trustee for the Missouri Pacific Railroad Company, following the adjudication of said Company, by this Court, as a debtor, under the provisions of Section 77 of the amended Bankruptcy Act, on March 30, 1933.

The Trustee appeals to this Court to hear and determine the amount and validity of the disputed tax, in accordance with the provisions of Section 64a of the Bankruptcy Act.

Following the filing of said petition, and upon the return day thereof (July 5, 1940) the State of Arkansas and the Corporation Commission, together with the several interested counties, appeared by the Attorney General for the State and filed a motion to dismiss Trustee's petition.

[fol. 36] The motion to dismiss is based upon the following grounds:

1st. That the order authorizing the Trustee to pay a certain part of the taxes, resulting from the assessment made by the Arkansas Corporation Commission and to withhold the balance pending the determination by this Court of the amount and validity of the disputed tax is in violation of Section 24 of the Judicial Code, as amended by the Act of May 4, 1934 (48 Stat. 775) which deprives United States District Courts of jurisdiction to enjoin, suspend or restrain the enforcement of any order of an administrative board of commission of a State, where jurisdiction is based solely upon the ground of diversity of citizenship or the repugnance of such order to the Constitution of the United States.

In the opinion of the Court this proceeding is not subject to the prohibition of Section 24 of the Judicial Code. This is not an injunction suit, nor is jurisdiction based solely upon diversity of citizenship or repugnance of the Commission's assessment to the Constitution of the United States. The Trustee invokes the jurisdiction of the Court to hear and determine the amount and validity of the disputed tax under the provisions of Section 64a of the Bank-

ruptcy Act. It is true that the petition alleged that the assessment is in violation of the 14th Amendment to the Constitution of the United States, but it also alleges that said assessment is in violation of the Constitution and of the Statutes of the State of Arkansas.

The Court is of the opinion that this ground of the State's motion to dismiss is without merit.

2nd. The second ground upon which the State relies in its motion to dismiss is that this Court is deprived of jurisdiction by the 1937 amendment to Section 24 of the Judicial Code (50 Stat. page 738) that:

"Notwithstanding the foregoing provisions of this paragraph, no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the assessment, levy or collection of any tax imposed by or pursuant to the laws of any State where a plain, speedy and efficient remedy may be had at law or in equity in the courts of such State."

[fol. 37] As has already been remarked, this is not an injunction suit, and, furthermore, the right of appeal to the State Courts does not afford an adequate remedy in such a case as is here presented.

This precise question was passed on by the Circuit Court of Appeals for this Circuit in Board of Directors of St. Francis Levee District vs. Kurn, 98 Fed. (2nd) 394, which involved the validity of certain Arkansas levee district taxes asserted against the Trustee of a railroad under reorganization. It was therein held the Act of August 21, 1937, did not deprive the Bankruptcy Court of jurisdiction to hear and determine the amount and validity of the disputed tax under the provision of Section 64a of the Bankruptcy Act, Certiorari was denied in the case last cited, by the Supreme Court, 305 U. S. 647.

In brief filed by the State in connection with its motion to dismiss effort is made to escape the force of the Court of Appeals decision in this St. Francis Levee District case upon the ground that the claims of the Levee District, involved in that case, were not "taxes". It will be observed, however, that throughout its opinion in that case the Court of Appeals referred to these claims as "taxes" and tax liens". And the Statute of Arkansas (Sec. 4465 Pope's Digest of Arkansas Statutes for 1937), which authorizes the assess-

ments against property in the district for the construction of levees, refers to these assessments as taxes.

It is true that in the present case there are not found the "numerous suits" to which the Court of Appeals refers in the St. Francis Levee District case as pending upon the levee taxes there involved. However, in the present case there exists tax liens upon the Trustee's property in some 50 counties in the State of Arkansas, based upon the assessment made by the Corporation Commission. This Court must ultimately pass on the validity of those liens and is expressly directed by Section 64a to order the payment of all taxes legally due. And the same section commits to the Bankruptcy Court the jurisdiction to hear and determine the validity of any tax asserted against the bankrupt estate which may be in dispute.

Section 64a, in substantially the same form as previously, was re-enacted by Congress in 1938 (52 Stat. page 874), in [fol. 38] the amendment of the original Act, presumably with full knowledge of numerous court decisions, previously handed down, holding that the Bankruptcy Court shall hear and determine the amount and validity of a disputed tax. This re-enactment of the Bankruptcy Act, with certain amendments not here material, was subsequent to the amendment of Section 24 of the Judicial Code by the Act of August 21, 1937, and it is not to be presumed that Congress would direct the Bankruptcy Courts to do what they were prohibited from doing in a previous Act.

The second ground of the State's motion to dismiss is likewise without merit.

3rd. The third reason asserted by the State in support of its motion to dismiss is that Section 64a of the Bankruptcy Act does not apply to taxes accruing after the Trustee acquired the property.

This precise ground for objection to the Court's jurisdiction was urged in the St. Francis Levee District case (*supra*). However, the Court of Appeals held therein that the Bankruptcy Court was the proper forum to hear and determine the amount and validity of taxes which in that case, as here, accrued after the Trustee acquired title to the property.

This Court is concluded by the decision of the Court of Appeals for this Circuit upon this question, and this ground must likewise be ruled against the State.

4th. The fourth reason urged by the State in support of its motion to dismiss is that Section 64a of the Bankruptcy Act is no part of Section 77.

This ground must likewise be ruled against the State upon the authority of the decisions of the Court of Appeals for this Circuit in the two St. Francis Levee District cases, 91 Fed. (2nd) 118 and 98 Fed. (2nd) 394. Those cases involved taxes asserted against a railroad in reorganization under Section 77, and the Court of Appeals specifically held that, by reason of the provisions of Section 64a, the Bankruptcy Court in which the reorganization was pending was vested with jurisdiction to hear and determine the amount and validity of the disputed tax.

[fol. 39] 5th. The fifth ground urged by the State of dismissal is that the Trustee failed to exhaust his administrative remedies before filing his petition in this Court.

So far as concerns the proceedings before the Arkansas Corporation Commission, the Court is of the opinion that paragraph 5 of the Trustee's petition alleges compliance with all of the requirements of Sections 2041, 2047 and 2050 of the Arkansas Statutes (Pope's Digest for 1937).

It is admitted that no appeal was taken from the action of the Corporation Commission to the State Courts, as is permitted by the Statutes of Arkansas. However, the fact that a right of appeal to the State courts was granted by the Statute does not deprive this Court of jurisdiction to hear and determine the amount and validity of the disputed tax under the express mandate of Section 64a of the Bankruptcy Act.

6. The sixth ground urged by the state for dismissal is that the Trustee had a plain, speedy and efficient remedy by appeal to the Pulaski Circuit Court and thence to the Supreme Court of Arkansas.

The court is of the opinion that this right of appeal granted by the Arkansas Statutes does not preclude the Trustee from petitioning this court to determine the amount and validity of the disputed tax under the provisions of Section 64a of the Bankruptcy Act.

7. The seventh ground urged by the State for dismissal is that the petition of the Trustee does not state a justifiable controversy.

The Court is of the opinion that the averments of the Trustee's petition present a justifiable controversy.

The Motion of the State to dismiss Trustee's petition herein will be overruled. Appropriate order will be entered.

Geo. H. Moore, United States District Judge.

[fol. 40] IN UNITED STATES DISTRICT COURT

(Title omitted)

ORDER OVERRULING MOTION OF ARKANSAS CORPORATION COMMISSION TO DISMISS PETITION OF TRUSTEE—Filed September 24, 1940

Now on this day the Court having fully considered the motion heretofore filed herein by the State of Arkansas to dismiss the petition filed in this proceeding by Guy A. Thompson, Trustee, together with briefs filed upon said motion by counsel for the State of Arkansas and by counsel for said Trustee and oral arguments upon said motion heretofore presented to the Court; and being fully advised in the premises, said motion to dismiss said petition is hereby overruled.

Geo. H. Moore, Judge.

IN UNITED STATES DISTRICT COURT

DESIGNATION OF MATTERS TO BE INCLUDED IN RECORD ON APPEAL—Filed September 24, 1940

Come the appellants, the defendants in the above entitled action—the Arkansas Corporation Commission, the members thereof and fifty-one (51) County Collectors of taxes and designate the following portions of the record and proceedings intended to be a complete record of the proceedings herein, to-wit:

1. Petition No. 1475 of the Trustee Relative to Taxes for 1939 Assessed Property of the Trustee in Arkansas filed herein April 11th, 1940.

2. Order of the Court of April 11th, 1940 entered upon the application in said Petition ordering the Trustee to [fols. 41-42] withhold and refrain from paying to the Collectors of taxes in fifty-one Counties in Arkansas the sum alleged to be in controversy in said Petition, amounting to \$416,043.17, alleged as an excessive assessment levied against the Trustee's property.

3. Motion to Dissolve the Injunction and Dismiss the Petition filed by said defendants on July 5th, 1940.

4. Order of the Court overruling said Motion, entered on the day of, 1940.

5. Opinion of the Court filed on the overruling of said Motion.

This Designation is intended to call for a complete record of all proceedings relating to the Petition and Order thereupon, and Motion to Dissolve and the Order overruling the same, which is appealed from.

Jack Holt, Attorney General. Lefel Gentry, Assistant Attorney General. Hill, Fitzhugh & Brizzolara, Special Counsel for the State. Attorneys for Arkansas Corporation Commission, the members thereof and the aforesaid 51 County Collectors of taxes referred to.

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 43] Appearances of counsel omitted in printing.

[fol. 44] IN UNITED STATES CIRCUIT COURT OF APPEALS,
EIGHTH CIRCUIT

ORDER OF SUBMISSION—November 22, 1940

This cause having been called for hearing in its regular order, argument was commenced by Mr. Joseph M. Hill for appellants, continued by Mr. James M. Chaney for appellee and concluded by Mr. Joseph M. Hill for appellants.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein, with leave to appellants to file a reply brief.

[fol. 45] IN UNITED STATES CIRCUIT COURT OF APPEALS,
EIGHTH CIRCUIT, NOVEMBER TERM, A. D. 1940

No. 11,864.

ARKANSAS CORPORATION COMMISSION, the Members Thereof,
and Fifty-One County Collectors of Taxes, Appellants,

vs.

GUY A. THOMPSON, as Trustee of Missouri Pacific Railroad
Company, Debtor, Appellee

Appeal from the District Court of the United States for
the Eastern District of Missouri

Mr. Joseph M. Hill (Mr. Jack Holt, Attorney-General for
the State of Arkansas, Mr. Leffel Gentry, Assistant Attor-
ney General for the State of Arkansas, and Messrs. Hill,
Fitzhugh & Brizzolara were with him on the brief) for
Appellants.

Mr. James M. Chaney (Mr. Harvey G. Combs was with
him on the brief) for Appellee.

Before Gardner, Woodrough and Johnson, Circuit Judges

[fol. 46] OPINION—DECEMBER 26, 1940

PER CURIAM:

The Missouri Pacific Railroad Company is the debtor
in proceedings under Section 77 of the Bankruptcy Act
for the reorganization of a railroad pending in the fed-
eral district court in Missouri, and has extensive prop-
erties in Arkansas. Its trustee filed a petition in the dis-
trict court in the reorganization proceedings on April 11,
1940, in which it was alleged that the Arkansas Corpora-
tion Commission, charged with the duty of assessing the
railroad's property in the state for taxation, had assessed
the same at the sum of \$28,050,000 for the year 1939; that
said assessed value is discriminatory, in violation of Sec-
tion 5 of Article XVI of the Constitution of Arkansas;
greatly in excess of the fair market value of said prop-
erties which the Arkansas statute provides shall be the
basis for assessment, and would impose upon the trustee
such an undue and disproportionate share of the taxes in
Arkansas as to deprive the trustee of his property without

due process of law and the equal protection of the laws, in violation of the federal constitution. The trustee alleged that by section 64 of the Federal Bankruptcy Act, as amended June 22, 1938 (11 U.S.C.A., Sec. 104 a [4]), it is provided that this court shall make no order for the payment of a tax assessed against the property of the trust estate in excess of the value of the debtor's interest therein as determined by the court, "and provided further that in case any question arises as to the amount or legality of any taxes, such question shall be heard and determined by the court." The petitioner prayed that the court hear and determine the amount and legality of the taxes assessed for the year 1939 against the property of the trustee in Arkansas, and that pending the determination by the court of the amount and legality of the taxes assessed, that the trustee be authorized to pay or tender payment in the aggregate sum of \$620,645.03 (about sixty per cent) and [fol. 47] to withhold any further taxes based upon the assessment until the further order of the court. On presentation of the trustee's petition, the court entered its order that the petition be set for hearing on a date certain and that the trustee should give notice of the hearing by sending notice to all parties who customarily receive printed copies of the record in the proceeding, and to the Attorney General of Arkansas, each member of the Arkansas Corporation Commission and each of the county collectors of the several counties in which taxes have been levied against the property of the trustee for the year 1939. It was also ordered that the trustee be authorized to pay or to tender payment to the several collectors of the counties in the aggregate amount of \$620,645.03, based upon the maximum proper assessment of said properties as conceded by the trustee, and to withhold until the further order of the court any additional taxes for the year 1939 based on the assessment made, pending the determination by the court of the amount and legality of the taxes so assessed.

The Arkansas Corporation Commission appeared on behalf of itself and the fifty-one tax collectors and presented a motion in writing that the petition of the trustee of April 11, 1940, be dismissed, and that the order entered upon the petition be in all respects dissolved. A hearing was had upon the motion and it was overruled. In an opinion accompanying its ruling on the motion, and its order, the court stated its conclusion that the petition of

the trustee was sufficient in law and presented a controversy within the court's jurisdiction in bankruptcy, and that section 64a of the Bankruptcy Act of 1938 "commits to the bankruptcy court the jurisdiction to hear and determine the validity of any tax asserted against the bankrupt estate which may be in dispute", and that none of the grounds presented in the motion justified dismissal of the trustee's petition or dissolution of the order made re-[fol. 48] specting the amount of the taxes to be paid or tendered to be paid by the trustee pending determination of the amount and validity of the disputed tax.

From this interlocutory order denying the motion the Arkansas Corporation Commission and its members and the fifty-one county collectors of taxes have appealed. They contend, as they did in the court below:

(1) That section 64a of the Bankruptcy Act of 1938 is not a part of Section 77 (covering railroad reorganization); (2) that said section 64a is applicable only to taxes which have accrued against a bankrupt prior to bankruptcy; (3) that the court's order authorizing the trustee to pay or tender to be paid a part only of the tax assessed in Arkansas is in effect an order of injunction against the payment of a tax and is violative of 28 U. S. C. A. 41, in that the laws of Arkansas afford the trustee a plain, speedy and adequate remedy, and (4) that the trustee's petition does not state facts sufficient to justify any judicial relief against the tax assessment complained of.

In limine the trustee has presented that this court should decline to entertain this appeal as the order appealed from is in a proceeding in bankruptcy and is manifestly interlocutory and is not conclusive of the merits of the controversy between the trustee and the Arkansas tax authorities. But we conclude that the appeal is authorized by the provisions of Section 24a, b, of the Bankruptcy Act as amended June 22, 1938 (52 Stat. 854-855) and decline to dismiss it.

(1) The question whether the provisions of 64a of the Bankruptcy Act were applicable in proceedings under Section 77 of the Act was necessarily involved in our decisions in *St. Francis Levee District v. Kurn*, 91 F. 2d 118 (cert. den. 302 U. S. 750) and *St. Francis Levee District v. Kurn*, 98 F.2d 394 (cert. den. 305 U. S. 647). Each of those cases [fol. 49] involved a railroad reorganization under Section

77 and in each of them the jurisdiction of the bankruptcy court was invoked by the railroad trustees and relief against taxes assessed pursuant to state authority was sought under the provisions of Section 64a. We held that the power conferred upon the bankruptcy court by that section to hear and determine the amount and validity of disputed taxes was applicable in proceedings for reorganization of a railroad under Section 77, and our mandate directed the bankruptcy court to proceed to hearing and determination of the validity and amount of the taxes in the cases in which the appeals were taken.

We did not reach our conclusion without full appreciation of the very great burden of responsibility that section 64a may impose upon the bankruptcy court in railroad reorganization proceedings, and we were not unmindful that during the period of railroad reorganization the several states through which the debtor railroads run may be temporarily restricted in the exercise of their general and customary sovereign powers in respect to the collection of taxes assessed against property within their borders. The relevant considerations on behalf of the state are ably developed in the brief of appellants and additional citations filed after oral argument.* But we decline to recede from our decisions rendered in the St. Francis Levee District cases. The reorganization of the debtor railroads in bankruptcy can not be regarded as a matter of merely local concern of some one state through which the roads may run. "The Constitution grants Congress exclusive power to regulate bankruptcy and under this power Congress can limit the jurisdiction which courts, state or federal, can exercise over the person and property of a debtor who duly invokes the bankruptcy law." *Kalb v. Feuerstein*, 308 U. S. 433-439. It is vitally necessary that the bankruptcy court [fol. 50] to which the reorganization of the railroad debtor herein has been confided by section 77 of the Act should be empowered to determine the validity and amount of all liens against the railroad property and to marshal them in order to accomplish the purpose of the reorganization proceedings. Section 64a confers such power in respect to taxes. *St. Francis Levee District cases*, *supra*; *Ex parte Baldwin*,

*Yale Law Journal, Vol. 50, p. 165, November, 1940; Transport Topics, December 2, 1940, p. 12.

291 U. S. 610; *Isaac v. Hobbs Tie & Lumber Co.* 282 U. S. 734; *Henderson County v. Wilkins*, 4 Cir., 43 F. 2d 670. See *New York v. Irving Trust Company*, 288 U. S. 329.

(2) As to the contention that Section 64a is applicable only to taxes which have accrued against the railroad debtor prior to the institution of proceedings under Section 77. The relevant wording of 64a as it appears in the 1938 amendment is "in case any question arises as to the amount or legality of any taxes, such question shall be heard and determined by the court" (meaning the bankruptcy court), and we discern no reason to hold that the words "any taxes" should be restricted as contended for. The amendment of the Bankruptcy Act of June 22, 1938, does not change the classification of taxes accruing during the trustee's possession as part of the cost and expenses of administration which are subject to the determination of the bankruptcy court. As the court must pass upon them for the purpose of allowance or disallowance, it is necessary that it should have the power to hear and determine their amount and legality. The contention is overruled.

(3) We are not persuaded that the preliminary order of the bankruptcy court directing the trustee to pay or to tender to pay a part of the taxes in dispute, and to withhold payment of the balance pending determination of the amount and legality of the taxes assessed, was an order of injunction within the meaning of 28 U. S. C. A. 41, and a fortiori we decline to hold that the order was in any [fol. 51] of its terms violative of that section. The provision relied on by appellants is as follows:

"Notwithstanding the foregoing provisions of this paragraph, no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the enforcement, operation, or execution of any order of an administrative board or commission of a State, or any rate-making body of any political subdivision thereof, or to enjoin, suspend, or restrain any action in compliance with any such order, where jurisdiction is based solely upon the ground of diversity of citizenship, or the repugnance of such order to the Constitution of the United States, where such order (1) affects rates chargeable by a public utility, (2) does not interfere with interstate commerce, and (3) has been made after reason-

able notice and hearing, and where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State. Notwithstanding the foregoing provisions of this paragraph, no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the assessment, levy, or collection of any tax imposed by or pursuant to the laws of any State where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State. (As amended May 14, 1934, c. 283, Sec. 1, 48 Stat. 775; Aug. 21, 1937, c. 726, Sec. 1, 50 Stat. 738.)"

We think it very plainly appears on the face of the provision that it has no relation to the administration of estates under the bankruptcy act. There is no express repeal of section 64a of the bankruptcy act and we find no indication of any intent to effect such repeal by implication. Whether or not there are state laws under which the trustee in bankruptcy might obtain a determination by the state courts of the amount or validity of the disputed state taxes allowable as liens and as part of the cost and expense of administration in bankruptcy is immaterial. The power to make the determination has been expressly conferred upon the bankruptcy court by special provision which is an integral part [fol. 52] of the plan of bankruptcy administration of the property brought within its exclusive jurisdiction. A withdrawal of the power so expressly conferred may not be inferred from the general provisions of 28 U. S. C. A. 41, which were obviously intended to apply to and prevent injunction suits to enjoin taxes such as had commonly been maintained in the district courts in the exercise of their general equity jurisdiction.

(4) Much of the brief of appellants is in support of attack in the nature of demurrer to the petition of the trustee on the ground that the petition does not state facts sufficient to justify judicial relief against the tax assessment complained of. Examination of the petition discloses charges made by the trustee that the action of the Arkansas Corporation Commission in increasing the assessment of the trustee's property was illegal, unconstitutional and invalid because (1) disproportionate consideration was given to certain elements of value; (2) consideration was given to an irrelevant element; (3) proper elements were not considered; (4) that the assessment was wrongfully discriminatory against the trustee and in favor of other property in

Arkansas in violation of Section 5 of Article XVI of the Constitution of Arkansas, and that there was discrimination amounting to constructive fraud depriving the trustee of his property with due process and in denial of the equal protection clause, contrary to the federal constitution. We can not say that the petition is so entirely lacking in averment of facts that it does not raise a question as to the amount and legality of the taxes within the meaning of Section 64a, or that this court would be justified in reversing the interlocutory order refusing to dismiss it. By its recent decision in *N. C. & St. L. Ry. v. Browning*, 310 U. S. 362, the Supreme Court has clarified the law applicable to the trustee's claims under the due process and equal protection clauses of the federal constitution, and whether any invalidity has resulted as charged, from violation of the constitution or statutes of the state, must be determined in strict conformity to the state decisions. The bankruptcy court is in position to require the parties to proceed promptly to final hearing of whatever issues are presented and to determine the amount and legality of the taxes, and we hold that it is fully empowered and required to do so. The interlocutory order appealed from is

Affirmed.

[fol. 54] IN UNITED STATES CIRCUIT COURT OF APPEALS,
EIGHTH CIRCUIT

No. 11864

ARKANSAS CORPORATION COMMISSION, the members thereof
and fifty-one (51) County Collectors of Taxes, Appellants,

vs.

GUY A. THOMPSON, as Trustee of Missouri Pacific Railroad
Company, Debtor

Appeal from the District Court of the United States for the
Eastern District of Missouri

JUDGMENT—January 3, 1941

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Missouri, and was argued by counsel.

Upon Consideration Whereof, It is now here Ordered and Adjudged by this Court that the interlocutory order of

the said District Court appealed from in this cause be, and the same is hereby, affirmed with costs; and that Guy A. Thompson, as Trustee of Missouri Pacific Railroad Company, Debtor, have and recover against the appellants the sum of Twenty Dollars for his costs herein and have execution therefor.

[fol. 55] IN UNITED STATES CIRCUIT COURT OF APPEALS

PETITION FOR STAY OF MANDATE—Filed January 8, 1941

Come the appellants herein and state to the court that they have ordered and paid for a transcript of the record of the proceedings in this Court, to be presented to the Supreme Court of the United States, with a petition for writ of certiorari to review the order of this Court entered herein on January 3, 1941. The appellants further allege that they are preparing the petition and will have it printed as soon as possible and file with said record in the Supreme Court of the United States.

Wherefore, your petitioners pray that an order be made staying the issuance of a mandate herein until the Supreme Court of the United States passes upon said petition, and if it grants it to stay the issuance of mandate until the case deferred therein.

Arkansas Corporation Commission, et al., Appellants. By Jack Holt, Attorney General. Leffel Gentry, Assistant Attorney General. Joseph M. Hill, Henry L. Fitzhugh and John Brizzolara, Special Counsel.

[File endorsement omitted.]

[fol. 56] IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER STAYING ISSUANCE OF MANDATE—January 10, 1941

On Consideration of the motion of appellants for a stay of the mandate in this cause pending a petition to the Supreme Court of the United States for a writ of certiorari, It is now here ordered by this Court that the issuance of the mandate herein be, and the same is hereby, stayed for a period of thirty days from and after this date, and if within said period of thirty days there is filed with the

Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

[fol. 57] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 58] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 3, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: File No. 45,064. U. S. Circuit Court of Appeals, Eighth Circuit. Term No. 715. The Arkansas Corporation Commission, and Fifty-One County Tax Collectors of Arkansas, Petitioners, vs. Guy A. Thompson, as Trustee of Missouri Pacific Railroad Company, Debtor. Petition for a writ of certiorari and exhibit thereto. Filed January 23, 1941. Term No. 715 O. T. 1940.

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